

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GENE PAUL WOODHAM, ) No. C 09-2795 CW (PR)  
 )  
Petitioner, ) ORDER DENYING PETITION FOR A  
 ) WRIT OF HABEAS CORPUS  
v. )  
 )  
A. HEDGPETH, Warden, )  
 )  
Respondent. )  
\_\_\_\_\_ )

INTRODUCTION

This is a federal habeas corpus action filed by a pro se state prisoner pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the petition is DENIED.

BACKGROUND

Petitioner is serving a sentence of sixteen years to life in state prison after having been convicted of second degree murder in 1983. In the instant petition, Petitioner is not challenging his conviction or a parole denial. Rather, his sole claim is that his continued incarceration past his "maximum eligible parole release date" of June 16, 1999 is a violation of his right to due

1 process. (Pet. at 6.)<sup>1</sup> The sole basis for his claim is that  
2 "maximum eligible parole release date" appears on documents from  
3 California Department of Corrections and Rehabilitation (CDCR)  
4 that are in his file. (Pet., Ex. A.) Petitioner sought, but was  
5 denied, relief on state collateral review on this claim. This  
6 federal habeas petition followed.  
7

8 Respondent asserts that the "maximum eligible parole date" --  
9 which here is sixteen years after Petitioner was first  
10 incarcerated, that is, his minimum sentence -- is used by the CDCR  
11 to calculate an inmate's minimum eligible parole release date, and  
12 does not create a constitutionally protected liberty interest.  
13 (Ans. at 6.)  
14

#### 15 STANDARD OF REVIEW

16 A federal writ of habeas corpus may not be granted with  
17 respect to any claim that was adjudicated on the merits in state  
18 court unless the state court's adjudication of the claims:  
19 "(1) resulted in a decision that was contrary to, or involved an  
20 unreasonable application of, clearly established Federal law, as  
21 determined by the Supreme Court of the United States; or  
22 (2) resulted in a decision that was based on an unreasonable  
23 determination of the facts in light of the evidence presented in  
24 the State court proceeding." 28 U.S.C. § 2254(d).  
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27 <sup>1</sup> Petitioner also claims, without elaboration, that his continued  
28 incarceration violates his right to equal protection. (Pet. at 6.)  
Because Petitioner's contentions are directed solely to due process,  
the Court does not address herein Petitioner's unsupported equal  
protection claim.

1 "Under the 'contrary to' clause, a federal habeas court may  
2 grant the writ if the state court arrives at a conclusion  
3 opposite to that reached by [the Supreme] Court on a question of  
4 law or if the state court decides a case differently than [the  
5 Supreme] Court has on a set of materially indistinguishable  
6 facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Under  
7 the 'unreasonable application' clause, a federal habeas court may  
8 grant the writ if the state court identifies the correct  
9 governing legal principle from [the Supreme] Court's decisions  
10 but unreasonably applies that principle to the facts of the  
11 prisoner's case." Id. at 413. The only definitive source of  
12 clearly established federal law under 28 U.S.C. § 2254(d) is in  
13 the holdings of the Supreme Court as of the time of the relevant  
14 state court decision. Id. at 412.

17 DISCUSSION

18 Petitioner's claim fails because he has no liberty interest  
19 in his "maximum eligible parole release date." "There is no  
20 constitutional or inherent right of a convicted person to be  
21 conditionally released before the expiration of a valid  
22 sentence." Greenholtz v. Inmates of Nebraska Penal &  
23 Correctional Complex, 442 U.S. 1, 7 (1979). A prisoner may  
24 acquire a liberty interest in parole if a state, through the use  
25 of mandatory language, creates a presumption that parole will be  
26 granted when certain designated conditions are satisfied. See  
27 Board of Pardons v. Allen, 482 U.S. 369, 377-78 (1987). The  
28

1 "maximum eligibility parole date" does not create a recognized  
2 liberty interest protected by the Due Process Clause. See  
3 Fryburger v. Curry, 348 Fed. Appx. 273 (9th. Cir. 2009).

4 In the instant matter, no parole date has been set, nor was  
5 Petitioner promised at any time that he would be paroled on a  
6 particular date. Petitioner has been promised only that he may  
7 become eligible for parole consideration. Prisoners serving an  
8 indeterminate sentence for second degree murder, such as in the  
9 instant matter, "may serve up to life in prison but may become  
10 eligible for parole consideration after serving minimum terms of  
11 confinement." Irons v. Carey, 505 F.3d 846, 851 (9th Cir.  
12 2007)(internal quotation marks omitted) (overruled on other  
13 grounds by Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010)(en  
14 banc)). The appearance of a "maximum eligible parole date" in  
15 CDCR documents in Petitioner's file does not change this state of  
16 affairs. That is, "maximum eligible parole date" does not set a  
17 parole date, but rather is a point of reference used by the CDCR  
18 to calculate parole eligibility dates, and, its appearance in  
19 documentation in Petitioner's file does not, under Ninth Circuit  
20 case law, create a liberty interest. Accordingly, Petitioner's  
21 claim is DENIED.

#### 22 CONCLUSION

23 The state court's denial of Petitioner's claims did not  
24 result in a decision that was contrary to, or involved an  
25 unreasonable application of, clearly established federal law, nor

1 did it result in a decision that was based on an unreasonable  
2 determination of the facts in light of the evidence presented in  
3 the state court proceeding. Accordingly, the petition is DENIED.  
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5 A certificate of appealability will not issue. Reasonable  
6 jurists would not "find the district court's assessment of the  
7 constitutional claims debatable or wrong." Slack v. McDaniel,  
8 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of  
9 appealability from the Court of Appeals.

10 The Clerk shall enter judgment in favor of respondent, and  
11 close the file.

12 IT IS SO ORDERED.

13 DATED: 2/14/2011

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15 CLAUDIA WILKEN

16 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GENE PAUL WOODHAM,

Case Number: CV09-02795 CW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

A HEDGEPEETH et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 14, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gene P. Woodham C-67944  
Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960-1050

Dated: February 14, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk